

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**JOHNSON CONTROLS, INC.,**

**Employer,**

**and**

**Case No. 16-RC-256972**

**SMART- SOUTHWEST GULF COAST  
REGIONAL COUNCIL,**

**Petitioner.**

**JOHNSON CONTROLS, INC.'S REQUEST FOR REVIEW OF  
REGIONAL DIRECTOR'S DENIAL OF JOINT MOTION**

Respectfully submitted,

/s/ Jeremy Moritz  
Jeremy C. Moritz, Esq.  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
155 North Wacker Drive, Suite 4300  
Chicago, IL 60606  
(312) 558-1420  
(312) 807-3619 fax  
[jeremy.moritz@ogletree.com](mailto:jeremy.moritz@ogletree.com)

Counsel for Johnson Controls, Inc.

Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Johnson Controls, Inc. (the "Company") requests review of the Regional Director for Region 16's denial of the *Joint Motion to Proceed with Manual Election* ("Joint Motion") filed by the Company and Smart-Southwest Gulf Coast Regional Council ("the Union").<sup>1</sup> (See Attachments 1 and 2.) The following compelling reasons require the Board to grant this Request:

- A substantial question of law exists because the denial of the *Joint Motion* presents a departure from officially reported Board precedent. *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998).
- A substantial question of law or policy is raised because the denial of the *Joint Motion* can only be based upon an implicit finding of "extraordinary circumstances" related to COVID-19 concerns. *Assuming arguendo* that the Regional Director properly deemed COVID-19 an extraordinary circumstance warranting revocation of the parties' stipulated election agreement ("Agreement") under *San Diego Gas* (i.e., a circumstance akin to where job duties are scattered over a wide geographic area, where voters are not present at a common location during a common time, or where a strike/lockout exists), the Regional Director was required to consider "the desire of all parties." Both the Company and the Union here seek a manual ballot election consistent with the parties' original Agreement.

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<sup>1</sup> A separate, more detailed Request for Review of the Regional Director's Amended Order is being filed simultaneously with this submission. The other Request centers around the propriety of the Regional Director's revocation of the parties' stipulated election agreement. The other Request sets forth the full procedural history of this matter, which is equally applicable to this filing. In the interest of brevity, that full history is not again included in this filing—which specifically focuses solely on the Regional Director's denial of the *Joint Motion to Proceed with Manual Election*.

The Regional Director's "overruling" of the Agreement can only be based upon internal Board concerns and/or the Regional Director's personal preferences. Those concerns, as a matter of public policy and Board precedent, cannot override the desires of the Company and the Union with respect to the agreed-upon method of election. *See San Diego Gas* at 1145, n. 8 (mail ballots should not be ordered based solely on budgetary or other internal Board concerns).

The Regional Director does not (and, should not) have unlimited discretion to overrule the determination and agreement of an employer and a union that a manual election can be safely conducted. Nor is there any basis for a finding that the Regional Director is somehow more qualified to evaluate "safety" than the parties themselves. The Regional Director's denial of the parties' *Joint Motion* undermines, rather than advances, the right of employees to participate in a Board-supervised election, and the public interest in maximum voter turnout and opportunity to participate.

### **CONCLUSION**

The Board should grant this *Request for Review of the Regional Director's Denial of Joint Motion*, grant the parties' *Joint Motion to Proceed with Manual Election*, and direct an election according to the original Stipulated Election Agreement as modified by the parties' *Joint Motion* with respect to the date, time and place changes necessitated by the Board's temporary pause of representation proceedings.

Alternatively, the Board should require a rationale from the Regional Director well beyond generalized concerns to the effect of, "but, but, COVID-19"—or bare assertions to the effect of, "after consideration, *Joint Motion* denied." It is respectfully submitted that the Company, the Union and eligible voters deserve better.

Dated this 29th day of April 2020.

Respectfully submitted,

/s/ *Jeremy Moritz*

Jeremy C. Moritz, Esq.  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
155 North Wacker Drive, Suite 4300  
Chicago, IL 60606  
(312) 558-1420  
(312) 807-3619 fax  
[jeremy.moritz@ogletree.com](mailto:jeremy.moritz@ogletree.com)

Counsel for Johnson Controls, Inc.

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## **ATTACHMENT 1**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**JOHNSON CONTROLS, INC.,**

**Employer**

**Case 16-CA-256972**

**and**

**SMART- SOUTHWEST GULF COAST  
REGIONAL COUNCIL,**

**Petitioner**

**JOINT MOTION TO PROCEED WITH MANUAL ELECTION**

This *Joint Motion to Proceed with Manual Election* is made by Petitioner SMART-Southwest Gulf Coast Regional (“the Union”) (through its attorney, Patrick M. Flynn) and the Employer Johnson Controls, Inc. (“the Company”) (through its attorney, Jeremy C. Moritz). In support of this Motion, the parties respectfully submit the following:

**BASIS FOR MOTION**

1. On March 4, 2020, the Regional Director for the National Labor Relations Board (“the Board”), Region 16 approved a Stipulated Election Agreement (“the Agreement”) establishing a manual election that was to have occurred on March 26, 2020. The election was postponed due to a March 17, 2020 Board Order.
2. On April 9, 2020, the Regional Director for Region 16 issued an *Order to Show Cause* concerning the method of election. In response, the Union requested a mail ballot procedure. The Company, by contrast, advocated for a manual election consistent with the Agreement.

3. Based on these positions (at least in part), the Regional Director revoked his approval of the Agreement on April 23, 2020. The Regional Director further set a hearing for May 1, 2020 regarding election matters.

4. The Union has reconsidered its position regarding the election. While the Union is not opposed to a mail ballot procedure, the Union submits that the safety and other assurances contained in the *Employer's Response to Order to Show Cause* are sufficient to permit a manual election to go forward. The Company's position remains as stated in its *Response*.

#### **REQUESTS FOR MANUAL ELECTION TO PROCEED**

Based on the foregoing, the parties request that the Regional Director reinstate the Agreement and proceed with the election as stipulated. *See, e.g., T&L Leasing*, 318 NLRB 324, 325 (1995)(election agreements are not to be set aside absent showing of impossibility); *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998)(desire of parties central to election method issue and, further, regional director may not consider internal Board concerns absent "scattered" voters or strike/lockout/picketing). The parties further request that the Regional Director amend the Agreement to reflect the following adjustments (strike-throughs and highlighted language reflect changes to Agreement's original language).

4. **ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

Date: ~~March 26, 2020~~ Thursday, May 14, 2020

Hours: ~~1:30 p.m.- 5:00 p.m.~~ 12:30 p.m.- 5:30 p.m.

Place: Main Lunch Room in White Building, at the employer's facility located at 5692 FM 1346, San Antonio, Texas 78220 and outdoor area immediately adjacent to Lunch Room.

Finally, given the parties' agreement as to the election date, hours, place and method, and the absence of a dispute as to any other matters relating to the election, the parties respectfully request that the Regional Director cancel the hearing currently scheduled for May 1, 2020.

**Dated:** April 24, 2020

Respectfully submitted,

Patrick M. Flynn, P.C.

s/ Patrick M. Flynn

Patrick M. Flynn  
1225 North Loop West, Suite 1000  
Houston, Texas 77008  
713.861.6163 (phone)  
713.961.5566 (fax)

Ogletree, Deakins, Nash, Smoak & Stewart

s/ Jeremy C. Moritz

Jeremy C. Moritz  
155 North Wacker Drive- Suite 4300  
Chicago, Illinois 60606  
773.710.1892 (phone)  
312.807.3619 (fax)

## **ATTACHMENT 2**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**JOHNSON CONTROLS, INC.**

**Employer**

**and**

**Case 16-RC-256972**

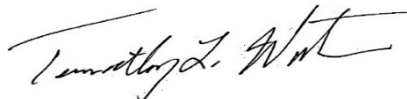
**SMART - SOUTHWEST GULF COAST  
REGIONAL COUNCIL**

**Petitioner**

**ORDER DENYING JOINT MOTION TO PROCEED  
WITH MANUAL ELECTION**

On April 24, 2020, the Employer and the Petitioner filed a Joint Motion to proceed with a manual election in this case. After consideration, the Motion is hereby denied.

**DATED** at Fort Worth, Texas, this 28<sup>th</sup> day of April 2020.



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Timothy L. Watson  
Regional Director  
National Labor Relations Board  
Region 16  
819 Taylor Street, Room 8A24  
Fort Worth, TX 76102-6107